PRESIDENTIAL RECONSTRUCTION IN TEXAS.

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III. THE RESTORATION OF STATE GOVERNMENT.[1]

1. The State Elections of 1866.

The last day of the Constitutional Convention had been given over largely to preparations for the approaching elections. About two weeks before adjournment a caucus of the radicals had tendered to Hamilton the nomination for the governorship, which he declined. Thereupon a new ticket, headed by Ex-governor E. M. Pease and B. H. Epperson, was made out and published with a declaration of the principles for which this party had contended in the Convention. Their opponents, after some hesitation on the part of the ultra-secessionists, centered upon Throckmorton, president of the Convention, and Geo. W. Jones, delegate from Bastrop in the same body. In a public letter, April 2, announcing their candidates, the conservatives endorsed the president's policy for the restoration of the State governments, asserted their opposition to the negro-political-equality policy of the radicals in Congress, and declared that the Texas radicals were preparing "to aid and abet Stevens, Sumner, and Phillips . . . . . in the establishment of a consolidated, despotic government."[2] The tickets thus put out did not, however, remain intact. Epperson, although always a strong Union man, refused to align himself with the radicals and was finally replaced by Lindsay; while several of the conservative nominees either withdrew or declined to run. Changes continued to be made in both tickets up to the eve of the election.

From the outset the canvass was bitter. The radicals, their defeats in the Convention still rankling, charged that their opponents were unwilling to abide by the true results of the war; that they refused even to accept the president's policy which they professed to endorse and support—in proof of which it was pointed

[1]Parts I and II of this article were printed in the April QUARTERLY, 1908.
[2]See *Southern Intelligencer*, April 19, 1866.

out that the Convention had fallen short of the president's recommendations; in fact, that they were as rebellious as in 1861; and that their real object was to get possession of the State offices and once more work into control of the national government in order to establish there the principles overthrown in the "rebellion," or failing in that, to reopen the "rebellion" at a convenient opportunity, and meanwhile to drive all Union men out of the State and nullify the emancipation of the negroes.[1] On the other hand, it was charged upon the radicals that, being disappointed—first, in the hope of prolonging the provisional government indefinitely; next, in securing control of the Convention—and having little chance of securing a new lease of power at the coming election, they were preparing to desert President Johnson whom they still professed to admire and endorse, and to align themselves with the ultra-radical element in Congress in its evident intention of re-establishing military rule over the South and enforcing political equality between whites and negroes. While the conservatives were stigmatized as "disloyal" and "rebellious" because of their hostility to the Civil Rights and Freedmen's Bureau Acts, they accused their antagonists of being the real disunionists because they supported the "destructive, unconstitutional legislation" of Congress and favored delay in the restoration of the State to its normal place in the Union.

Probably there was as much truth in these charges as in those of the average heated political campaign. It is certainly true that the conservatives were unwilling to concede more changes in the characters and relations of the State and Federal governments than they would be obliged to, and it seems true that their admiration of the president at this time was closely related to and in direct proportion to their fear of the congressional radicals; but to confuse their hatred of the latter with their attitude toward the government, or to assert that desire for political power and influence was tantamount to rebellion, or that they were preparing a crusade against Union men and a renewal of rebellion was the sheerest nonsense, and beyond the threats of a few braggarts and ruffians there seems to be no foundation for

[1]See files of *Flake's Bulletin, San Antonio Express,* and *Southern Intelligencer* (radical papers) for April, May, and June, 1866.

the charge. Surely nothing disloyal could be found in the utterances of their candidate, Throckmorton. In the course of one of his speeches, while discussing the relations of the people to the government, he said, "The president may be defeated in his policy; other laws equally as objectionable as the civil rights statute may be enacted; the Northern people may refuse to believe in our sincerity and loyalty; we may be kept out of the halls of legislation and yet be required to meet our portion of the public burdens, . . . we may continue to be misrepresented and traduced; troops may be quartered among us where there is profound peace and the frontier remain unprotected. . . . But if these things happen it is our duty to bear them patiently. Whatever law is passed, however odious it may be, it should be obeyed by us as long as it is the law of the land. Let us by our our conduct and example sustain the majesty and supremacy of the law."[1] Nor is it entirely true that the radicals had as yet embraced all of the doctrines of Thaddeus Stevens or of Wendell Phillips. Pease declared that he was opposed to complete negro suffrage because the blacks were not intelligent enough to vote; but, if the United States Government should require it, he would be willing to concede the suffrage to such negroes as could read and write understandingly rather than have Texas remain under provisional government, and he claimed that this was the view of the majority of his party.[2] Nevertheless, it soon became apparent that that party was really in alliance with the enemies of the president. As the conservatives had found a natural ally in Mr. Johnson, their opponents had been brought more and more into dependence upon the Congressional radicals; and, as every day it became more evident that the conservatives would carry the State, while in the North the ultimate decision in the great problem before the nation was to be with Congress rather than the president, an alliance with the former offered advantages and promises of an exceedingly seductive character. Long before the date of the election the alliance was made known. Governor Hamilton's attorney general, Alexander, had written to the leaders in Washington beseeching them to delay restoration as long as possible, and the

[1]Clipping from *Houston Telegraph*, found in *Johnson Papers*.
[2]See *San Antonio Express*, May 24, 1866.

correspondence found its way into the papers.[1] Hamilton, himself, after a brief but stormy campaign tour, turned over the duties of his office to Bell, the secretary of state, and hurried north to enlist in the campaign against the president, where his violent denunciations both of Johnson and the people of Texas won him fame in the North and increased hatred in his own State. Pease himself had been personally popular and conducted his campaign with characteristic moderation; but the anti-radical feeling was too strong, and the conservatives were overwhelmingly victorious in the elections. The Throckmorton ticket was elected by an immense majority, 49,277 to 12,168 votes. At the same time the amendments to the constitution were ratified by 28,119 to 23,400 votes. This comparatively small majority may have been due to the fact that the salaries of the State officials generally had been raised.

2. *Inauguration of the New Government.*

As soon as it was positively known that the conservative ticket was elected, the secretary of state, Judge Bell, telegraphed President Johnson for instructions, expressing the opinion that the provisional officers should retain control until the president should consent to the installation of those newly elected. His course received the approval of Mr. Johnson, who, however, gave no immediate indication of the action he expected to take. In the meantime it was rumored that the conservatives would not be allowed to take possession of the State offices, and that the provisional government would be continued. A number of the radicals had gone North and it was feared that their representations as to the disloyalty of the victorious party might have a disquieting effect upon the government at Washington. Pease denied that there was any truth in the rumor, but a number of anxious dispatches were sent by Throckmorton and his friends to assure Mr. Johnson that the newly-elected officials were "alike the friends of the president's policy and lovers of the Union of the States."[1]

The Eleventh Legislature assembled at Austin on August 6.

[1]Throckmorton, John Hancock, Burford, Buckley to Johnson, MSS. in *Johnson Papers*. See also *Tri-Weekly Telegraph*, July 12, 1866; *Southern Intelligencer*, July 19, 1866.

The votes for governor were counted and Throckmorton was declared duly elected; and, although no word had come from Washington, arrangements were made for the inauguration. On the morning of August 9, the governor and lieutenant governor-elect were inaugurated in the presence of the two houses of the Legislature, the officers of the provisional government, several officers of the United States army, and a large concourse of citizens. Four days later a telegram was received from the president by the provisional secretary of state, ordering that the care and conduct of affairs in Texas be turned over to the constituted authorities chosen by the people. Governor Throckmorton and his subordinates were at once yielded possession and entered upon the discharge of their duties. The military authorities in the State received orders to render the same support to the newly-organized authorities as had been afforded to the provisional government. On August 20 President Johnson issued a proclamation declaring that the insurrection in Texas was at an end, and that peace, order, tranquility, and civil authority existed throughout the whole of the United States.[1]

Nevertheless, the outlook for the new state government was not auspicious. In his inaugural address the Governor had described the situation in graphic language:

"At a time like the present when we have just emerged from the most terrible conflict known to modern times, with homes made dreary and desolate by the heavy hand of war; the people impoverished, and groaning under public and private debts; the great industrial energies of our country sadly depressed; occupying in some respects the position of a State of the Federal Union, and in others, the condition of a conquered province exercising only such privileges as the conqueror in his wisdom and mercy may allow; the loyalty of the people to the general government doubted; their integrity questioned; their holiest aspirations for peace and restoration disbelieved, maligned and traduced, with a constant misapprehension of their most innocent actions and intentions; with a frontier many hundreds of miles in extent being desolated by a murderous and powerful enemy, our devoted frontiersmen filling bloody graves, their property given to the flames

[1] *Messages and Papers of the Presidents,* VI, 434-438.

or carried off as booty, their little ones murdered, their wives and daughters carried into a captivity more terrible than death, and reserved for tortures such as savage cruelty and lust alone can inflict; unprotected by the government we support, with troops quartered in the interior where there is peace and quiet; unwilling to send armed citizens to defend the suffering border, for fear of arousing unjust suspicions as to the motive; with a heavy debt created before the late war, and an empty treasury; with an absolute necessity for a change in the laws to adapt ourselves to the new order of things, and embarrassments in every part of our internal affairs, . . . the surroundings are uninviting, the future appears inauspicious."[1]

3. The Eleventh Legislature.

Comparatively few members of the Convention returned to the Legislature. Many of the conservatives from the earlier body had been elected to various State offices, while the radicals had been retired to private life. Only a few of the latter, chiefly from the German counties in the southwest were successful in the elections, and the membership of the Legislature, therefore, was overwhelmingly conservative. But now that the power of the radicals was removed, the discord in the conservative ranks at once became apparent. The recent alliance between the "conservative Unionists," headed by the governor, and the secessionists had never been more than a *mariage de convenance,* and neither party was willing to yield to the other the control of the State. In the organization of the House the secessionists were defeated in the selection of the Speaker, Nat M. Burford of Dallas county being elected over Ashbel Smith of Harris county by 39 to 30 votes.

Of the many tasks which confronted the Legislature, the one which demanded the most careful handling was the selection of two United States senators, and it was precisely in this that the conservative party laid itself open to the attack of its enemies. Of the eight or ten candidates whose names were submitted, four were clearly in the lead. These were O. M. Roberts, David G. Burnet, B. H. Epperson, and John Hancock. According to agree-

[1] *House Journal, Eleventh Legislature,* 19.

ment one was to be chosen from Eastern Texas, the other from the western part of the State. Hancock and Epperson had both been union men throughout the war,[1] but since the adjournment of the convention they had acted with the conservatives. Roberts had been one of the most prominent secession leaders in the State and was universally regarded as the candidate of that element. Judge Burnet, formerly president of the Republic, had also been a secessionist, but because of his advanced age had for many years taken no active part in political affairs. The two houses met in joint session on August 21 for the election of Senators. There had been some rumors of an alliance between the forces of John Hancock and Roberts, but if such an arrangement was ever made it ahd broken down.[2] The candidates from the western district were Judge Burnet, John Hancock, and Ex-governor Pease, lately defeated for the governorship. Burnet was elected on the first ballot, the vote standing 65 for Burnet, 43 for Hancock, and 7 for Pease.[3]

Angered at the attitude of the secessionists, Hancock's followers went in a body to the support of Epperson against Roberts. The next ballot stood, Roberts 30, Epperson 43, with 41 more votes scattered among five other candidates. It was not until the thirteenth ballot two days later that Roberts received a majority, 61 to 49, and was declared elected.[4] The contest was not fought out entirely upon factional lines, but sufficiently so to emphasize the strained relations between the "Union conservatives" and the original secessionists.[5] Thanks, however, to their common fear of the Northern radicals, they never came to the breaking point.

As might have been expected, the election of two uncompromising secessionists, neither of whom was able to take the test oath,[6]

[1]Epperson, however, had served in the Confederate Congress, while Hancock had remained in retirement.

[2]D. M. Short to O. M. Roberts, August 24, 1866, MS. in Roberts Papers.

[3]*House Journal, Eleventh Legislature,* 119.

[4]*Ibid.,* 119-139.

[5]Short to Roberts,*Roberts Papers.*

[6]The "test oath" or "iron-clad oath" was required of all officials of the United States according to Act of Congress, July 2, 1862. It was as follows:

"I, (A. B.), do solemnly swear (or affirm) that I have never voluntarily born arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or en-

only confirmed the Northern mind in its suspicions of Texas "loyalty." *Flake's Bulletin* expressed the opinion that Hancock's defeat was due to "his *ability* to take the test oath," and added, "It is clear that the Legislature does not want its Senators admitted. . . . It has closed the doors of Congress against the representatives of Texas." The Houston *Telegraph* confessed that "this election will be a tremendous weapon in the hands of A. J. Hamilton and the Radicals in the coming fall elections. It is an awkward response to the utterances and actions of the Philadelphia convention."[1] However, the *Houston Journal* boldly declared that it was "a simple indication that for the restoration of the Union the test oath must be repealed. The South loves its soldiers and will not forget them or admit that the "lost cause" had in its any element of treason."

The Senators-elect proceeded to Washington, where they were joined later by three of the four representatives elected in the fall, Geo. W. Chilton, B. H. Epperson, and A. M. Branch.[2] They were not only refused their seats, but their credentials were ignored and they were not welcome in the lobbies; and thus were the "accredited representatives of a sovereign State" reduced to watch the doings of Congress from the galleries.[3] They found Hamilton, Pease, and other Texas radicals who had preceded them in close alliance with the opponents of the president and

couragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God." *U. S. Statutes at Large*, XII, p. 502.

[1]The National Union Convention composed of supporters of President Johnson's reconstruction policy had demanded the admission of the southern representatives to Congress and had indignantly denied that the South was still disloyal.

[2]C. C. Herbert, from the Fourth Congressional District, remained in Texas.

[3]Roberts to Throckmorton, MS. in *Executive Correspondence*, Texas archives. See also *The Experiences of an Unrecognized Senator* in THE QUARTERLY, XII, 145.

doing all in their power to defeat the recognition of the new State government and to substitute some form of Congressional control.[1] After attending to such business for their State as was possible in the executive departments, and after futile efforts to come to a definite understanding with the President and his supporters upon a program to be pursued, the Texas delegation issued an address "to the Congress and People of the United States," setting forth their view of the rights of Texas in the Union and the condition of affairs in the State,[2] and then, with the exception of Epperson, returned home.

In his first message to the Legislature the governor submitted the joint resolutions of Congress proposing a thirteenth and a fourteenth amendment to the constitution of the United States. In regard to the first he offered no recommendation, on the ground that it had already been adopted by the requisite number of States and had been embodied in the constitution of Texas by the Convention. With respect to the second, he expressed "unqualified disapproval" of it as "impolitic, unwise, and unjust," and recommended its rejection. The two resolutions were referred to the committees on Federal Relations, but no action was taken until two months later. The House committee in reporting on the Thirteenth Amendment stated that, inasmuch as the people of Texas through their convention had already acknowledged the supremacy of the constitution of the United States of which the said amendment was an integral part, the Legislature had no authority in the matter and any action on its part "would be surplusage if not intrusive." The committee asked and was allowed to be relieved of any further consideration of the measure.[3] The Senate committee seems to have made no report on this subject. The report made on Article XIV by the House committee through its chairman, Ashbel Smith, is an able and interesting document. It expresses very clearly the fears aroused by the program of the radicals, and states succinctly the practical and constitutional grounds of Southern opposition. In the first place, so the committee declared, the submission of the article

[1] *The Experiences of an Unrecognized Senator*, THE QUARTERLY, XII, 100, 102-103.

[2] For this address, see THE QUARTERLY, XII, 106-119.

[3] *See House Journal, Eleventh Legislature*, 219, 493.

was in itself a nullity, because, contrary to the plain intent of the constitution, the representatives of the States most concerned were denied participation in the Congress proposing it. Moreover, the article as submitted was clearly intended to deprive the States of certain rights and powers over their citizens that they had held without question since 1776, and to transfer to the Federal government a preponderance of power dangerous alike to the constitutional autonomy of the States and to the liberties of the people. Furthermore, it would degrade the governments and social institutions of the Southern States by enforcing wholesale negro suffrage along with a practical disfranchisement of the whites. It was dictated not by statesmanship, but by "passion and malignancy," and it required that the members of the Legislature be the instruments of their own and of their people's degradation. The committe admitted that it was thoroughly aware of the dangers involved in rejecting the amendment, for threats and warnings had been given by the radical leaders of the complete prostration of the State through the abrogation of its government, the establishment of martial law with a military governor, the confiscation of property and the granting of negro freehold homesteads therefrom, the abrogation of presidential pardons to be followed by trials before a military commission, the impeachment of the president and the establishment of a negro government for bringing Texas back into the Union. Yet refusing to yield to mere expediency when it meant the abandonment of principle, the committee would recommend the rejection of the article proposed. The recommendation was sustained by a vote of 70 to 5.[1] The Senate committee made a similarly adverse report and was also sustained.[2]

The most interesting and important of the purely legislative work of the session was that dealing with the freedmen and labor. Reagan, from his home near Palestine again issued a public letter, to the governor this time,[3] calling attention to the prospective

[1]For full report of the committee and the vote, see *House Journal, Eleventh Legislature*, 577-583.

[2]See *Senate Journal, Eleventh Legislature*, 417.

[3]Reagan's *Memoirs*, 301. The original is in *Executive Correspondence.*

fulfillment of his prophecies in the Fort Warren letter,[1] and again urging a qualified suffrage and wider privileges in the courts for the freedmen in order to ward off the attacks and forestall the plans of the Northern radicals. For the present, however, he had no following in his own party, and this letter only increased the irritation produced by the former one. Laws were passed on the subjects of apprenticeship, vagrancy, labor contracts, and the enticing away of laborers; and although no apparent distinction was made in their application as to whites and blacks, it is clear enough that they were intended solely for the regulation of negroes and negro labor.

The labor situation had not cleared entirely, despite the energetic work of the Freedmen's Bureau during the winter and spring and the efforts of its officials to keep the freedmen at work during the crop-growing season. When paid a monthly cash wage, he usually preferred to spend it before going back to work; and, when offered better wages elsewhere, he had no hesitation in breaking a contract in order to accept. On May 15, General Kiddoo, who had just succeeded General Gregory as Assistant Commissioner for Texas, found it necessary to issue a circular order forbidding the enticing of contract laborers from one employer to another. The person thus inducing a freedman to leave his contract was to be fined from $100 to $500 and the laborer from $5 to $25. A fine of $50 could also be assessed against a freedman for voluntarily leaving his employer without just cause before the expiration of the contract.[2] General Kiddoo seems to have appreciated the needs of the planters better than did his predecessor, and he enjoyed a corresponding share of their confidence. In June, when the crops had got into a "precarious condition by reason of excessive rains and grass," all Bureau agents were instructed to advise the negroes to work early and late and to stand by their contracts in order to save the crops, because they had therein a common interest with the planters.[3]

The *Texas Republican,* August 11, published an order from the Bureau agent at Marshall containing a list of twelve freedmen

[1]See THE QUARTERLY, XI, 301,302.
[2]Circular Order No. 14, from file in *Executive Correspondence.*
[3]Circular Order No. 17, in *Executive Correspondence.*

who had left their employers, also named, and notifying other employers not to hire them. Notice was given that a weekly list of delinquent laborers would be published. These lists appeared in the paper from time to time. Evidently the Bureau officials were being driven to the adoption of measures they had formerly condemned. Again, it was found necessary, when the cotton picking season came on, to instruct agents everywhere to see to it that the negroes employed the utmost diligence in gathering the crop, which was short on account of excessive rains, grass, and the ravages of the army worm.[1]

When it was possible for an arm of the government itself, organized and operated in the interest of the freedman and enjoying his full confidence, to keep him at work and out of mischief only by constant watchfulness and semi-coercion, it must have seemed urgently necessary that the State adopt a system of regulation more permanent than that of the Bureau professed to be. The Legislature had before it as a warning evidences of the deep resentment of the North at the "black codes" of the States organized the previous year, and was able therefore so to frame its laws as to offend in a less degree the watchful prejudices of Northern voters.

The general apprenticeship law did not differ materially from those in force elsewhere. It provided that any minor with the consent of parent or guardian could be bound out by the county judge until twenty-one years of age unless sooner married. The master, or mistress, was to enter into bond to treat him humanely, teach him a trade, furnish medical attendance and schooling, and was allowed to inflict moderate corporal punishment. A runaway could be recovered and brought before a justice and punished, or freed if he could prove he had good cause to run away. The apprentice could not be removed from the county without an order from the county judge. Any one enticing away an apprentice was subject to fine and suit for damages.[2] The vagrancy law defined a vagrant as "any idle person living without any means of support and making no exertion to earn a livelihood by any honest employment," and comprehended the usual assorted list of unde-

[1]Circular Order No. 21, in *Executive Correspondence.*
[2]Gammel, *Laws of Texas,* V, 979.

sirables.[1] Neither of these acts made any mention of race or color and neither seems to have given enough offense to call for annulment by the Bureau.

It was otherwise, however, with the labor law. The original Senate bill provided that all laborers should enter into a written contract for the whole year on or before the 10th day of January. Its authors undoubtedly had in mind negro labor only and intended to provide against a repetition of the troubles of the previous winter. Nevertheless, a severer blow to the best interests of the State could hardly be imagined, especially since no distinction was made between white and black laborers and efforts were being made at the time to induce white immigration. The presumption was that any laborer who failed to make a contract by January 10, no matter what wages were offered, was liable to punishment under the vagrancy law. The *Southern Intelligencer* furiously attacked the bill, denominating it "a legislative monster," and declaring "its practical effect would be to make labor synonymous with crime and to degrade the free laborer to the condition of a slave." The House, however, so amended the bill as to allow contracts to be made at any time for any length of time. The Senate rejected the amendments and a joint conference committee was appointed. The committee extended the time limit to January 20, "or as soon as practicable thereafter," and made the law applicable only to "common laborers."[2] In this form the bill passed both House and Senate, but was later reconsidered in the House and a more liberal form was given it. As finally passed and approved, the act provided that all contracts for labor for periods longer than one month should be made in writing before a magistrate or two disinterested witnesses, signed in triplicate, and recorded. Laborers had full liberty to choose employers, but could not leave them afterwards, except from just cause or by permission, on pain or forfeiture of all wages earned. Employers had the right to make deductions from wages for time lost, bad work, or for any injury done to tools or stock, but the laborer had a right of appeal

[1]Gammel, *Laws of Texas*, V, 1020.
[2]*House Journal, Eleventh Legislature*, 442, 446, 456, 515, 562, 718. Also *Southern Intelligencer*, October 4 and 11, 1866.

to a magistrate. Laborers were not allowed to leave home without permission or to have visitors during working hours, and were required to be obedient and respectful. They were given a lien on one-half the crop as security for their wages; the employer was subject to a fine for cruelty or non-fulfillment of contract, and the fine was to be paid to the laborer.[1] The supporters of the measure held that something of the kind was necesary for the proper regulation of the labor of an ignorant, improvident, and irresponsible people still under the influence and traditions of recent slavery. Their opponents very sensibly urged that the act was ruinous to white labor and would keep it out of the State. But the law was not long in force, for at the beginning of the next year General Kiddoo issued an order to the effect that it would be disregarded, and that contracts made in accordance with its provisions would not be approved.[2]

Minor measures were passed, one to punish persons enticing away contracted laborers, another explicitly granting to freedmen all rights not prohibited by the constitution, except intermarriage with whites, voting, holding public office, serving on juries, and testifying in case in which negroes were not concerned. The governor was directed to examine into the affairs of the late Military Board and to take measures to recover for the State the United States bonds alleged to have been fraudulently paid out during the war; State troops were provided for the protection of the frontier, and President Johnson was petitioned to have the interior garrisons also removed thither. In the last days of the session the governor informed the president of the chief results accomplished and asked for suggestions. Mr. Johnson's only reply was to urge that the Legislature "make all laws involving civil rights as complete as possible, so as to extend equal and exact justice to all persons without regard to color," if it had not already been done; and to express a firm confidence in the ultimate complete restoration of the Union.[3]

The Legislature adjourned November 13. All in all, its members had taken the course they might most reasonably have been expected to take. If their selection of United States Senators

[1]Gammel, *Laws of Texas*, V, 994.
[2]General Orders No. 2, January 3, 1867, in *Executive Correspondence*.
[3]*Annual Cyclopaedia*, 1866, p. 743.

was an unnecessary act of defiance, the rejection of the Fourteenth Amendment may be ascribed to a higher motive, the desire to maintain at any cost the fundamentals of their political philosophy, the cherished institutions which alone in their eyes made for free government. Even the labor law, harsh and stringent as it seems, was almost universally regarded as necessary both to the good order and the protection of the negroes for whom alone it was intended. Keenly conscious only of local needs, they had neglected to take sufficiently into account the forces preparing for their destruction in the North.

4. The Problems and Policies of Throckmorton's Administration.

Governor Throckmorton regarded Mr. Johnson's peace proclamation of August 20[1] as legally and definitely terminating the war and clearly establishing the supremacy of the civil over the military authority.[2] To secure the recognition of this supremacy as an accomplished fact became the chief aim of his administration. It was a course which, because of the hostility of a powerful party to the restoration policy of the president and because of the jealous suspicion of the local radicals and many of the military officials with whom he had to deal, was beset with many obstacles. But a definite and clear-cut plan is discernable throughout his term of office and one who follows its history closely must be impressed with the unfailing honesty and the strong common sense of the governor.

His purpose was, first, by the vigilance of peace officers and the regular and unhampered operation of the courts to secure the restoration of order and a just and more complete enforcement of the laws; second, in this way to eliminate the necessity of military courts, particularly those of the Freedmen's Bureau, and to induce them to yield to the State courts full jurisdiction of cases properly belonging to the latter; and, third, to secure the removal of the military garrisons from the interior to the unprotected frontier now devastated by the Indians.

During the spring and summer of 1866 the violence and law-

[1] *Ante*, p. 208.
[2] Throckmorton to Shropshire, *Executive Correspondence.*

lessness which had characterized the previous year had been steadily decreasing; yet conditions were still unsettled and only relatively quiet. To travelers from the older States there doubtless seemed to be very little of personal security still, for bloody encounters were common, and in some localities the offenders went unpunished. It should be remembered, however, that not only in Texas but in the Southwest generally sharp disagreements between man and man were customarily settled as often by personal conflict as by legal adjustment, and where it had been "a fair fight" peace officers were likely to be negligent and juries lenient. It was the rough way of the frontier, and Texas was pre-eminently a frontier State. But as long as frontier methods should prevail to the neglect of the duly organized judiciary, it would be useless to expect that the military officials would report Texas as peaceful or the freedmen and "loyalists" as safe; and, therefore, the governor exerted his influence to the utmost to secure energetic action from the sheriffs and promptness and impartial justice on the part of the courts. To this end he was in constant correspondence with influential citizens in all parts of the State and systematically urged upon the military confidence in the civil authorities.

Had the governor and the army been in complete accord in regard to their respective jurisdictions, clashes between citizens and soldiers would nevertheless have been unavoidable, for there was no way of foreseeing and preventing private quarrels. Far more serious than these, however, were several outbreaks which assumed a dangerous character because of reckless official participation in them. Of these the most notorious was the burning of Brenham, where a battalion of the 17th Infantry was stationed under the command of Major G. W. Smith. On the night of September 7, 1866, a crowd of drunken soldiers forced their way into and broke up a negro ball. Then, pursuing some negroes who fled for protection to a social gathering of some of the white people, they made their way thither and attempted to break up that. They were resisted, a fight ensued, and two soldiers were shot, but not seriously hurt. They went back to their camp and the whole troop turned out and went to town, their commander with them. He arrested two citizens and threatened the town if others did not surrender themselves. Then, under his orders, two stores were

broken into under pretense of searching for the citizens wanted, and were rifled of their contents. Shortly afterwards soldiers were discovered setting one of these stores on fire. An entire block of buildings was destroyed with a loss of over $130,000. The citizens appealed to the governor, and at his request an investigation of the affair was made by the regimental commander, Colonel Mason, then on duty at Galveston. Mason's report disclosed practically nothing and was a palpable "white-wash."[1] A special committee of the Legislature, after an extensive investigation, made a report identifying certain soldiers as guilty and implicating Major Smith, who had allowed the soldiers accused to desert and had refused to assist the committee.[2] A grand jury indicted Smith on a charge of burglary and arson, but although Throckmorton appealed to the President on behalf of the civil courts,[3] it proved impossible to bring the officer to trial in defiance of his military superiors.[4] A judgment for damages was rendered against him in favor of a firm whose store had been burned; but in July, 1867, when martial law was again supreme, General Griffin issued a special order reversing this judgment and dismissing all proceedings against the officer because "the acts [of Smith] were committed in discharge of his duty as an officer, and the action of the court was dictated by a spirit of malicious persecution, fostered by vindictive and disloyal sentiments."[5]

In Bosque county occurred an incident that does much to explain the bitter hostility frequently shown to the Freedmen's Bureau agents. A negro, charged with the rape of a young white woman, had been arrested, jailed, and duly indicted, when a Bureau agent, living twenty miles away, came in and demanded the negro of the sheriff, threatening that officer with arrest and

[1]It is given in *The Southern Intelligencer*, September 27, 1866.

[2]The report of the committee, with the testimony of all witnesses examined by it, is given in the appendix to *House Journal, Eleventh Legislature.*

[3]Throckmorton to Stanbery, October 12, 1866; MS. copy in *Executive Records, Register Book* No. 84, p. 120.

[4]Sheridan accepted unquestioningly the statements made by Mason and Smith, and in his report to Washington, said: "At Brenham two unarmed soldiers were shot. The grand jury found no bill against the would-be assassins, but indicted Major Smith for burglary because he broke into the house of some citizen in order to arrest these men." *Official Records, War of Rebellion,* Series I, Vol. XLVIII, Part I, 301.

[5]Special Order No. 133, July 10, 1867. *Executive Correspondence.*

trial before a miltary commission at Houston if he refused to surrender the prisoner, and showing an order from his superior officer in justification of his action. The negro was turned over to him only to be released shortly afterward.[1] A negro cook on a vessel entering Galveston was, at the request of the captain, arrested by the civil authorities on a charge of mutinous and disobedient conduct, but was released by order of General Kiddoo.[2]

In Matagorda county a freedman indicted for assault to murder was forcibly taken from the custody of the sheriff by the local Bureau agent. The Governor, seeing that his belief in the supremacy of the civil authority was not shared by the Bureau officials, endeavored to come to some understanding with them. He wrote to General Kiddoo concerning the affair at Matagorda: "I desire to know if the action of the agent of the Bureau in thus interfering with the enforcement of the law is by your order and if he is sustained by you in so doing. I would respectfully desire of you, at your earliest convenience, information of the extent of your power and authority, and how far you expect to exercise it to interfere with the civil authorities in the exercise of their duty in bringing freedmen to trail for offenses committed against the laws of the State. . . . I would also inquire if you recognize the President's Peace Proclamation as making the military subordinate to the civil authority."[3] On the same date Throckmorton wrote Judge Shropshire at Matagorda that he had received information from General Heintzleman, commanding the forces in Western Texas, that General Grant had issued an order declaring the President's Peace Proclamation had superseded military orders previously issued requiring the military to interfere with the civil authority in certain cases. "In other words," adds the Governor with evident satisfaction, "the Proclamation restores the supremacy of civil over military authority."[4]

A serious situation existed at Victoria. The negro troops stationed there under the lax command of a Captain Spaulding had

[1]J. K. Helton to Throckmorton, August 21, 1866, in *Executive Correspondence.*

[2]Alvan Reed to Throckmorton, *Executive Correspondence.*

[3]Throckmorton to Kiddoo, November 7, 1866; copy in *Executive Records, Register Book No. 84,* p. 125.

[4]Copy in *Executive Records, Register Book No. 84,* p. 152.

taken control of the county jail and rendered it impossible for the civil authorities to keep a negro or Northern man confined there, no matter what his offense had been. It was alleged by the county judge that these soldiers had forcibly released two negroes convicted of horse-theft and an ex-federal soldier convicted of robbery. On the other hand, they had taken out and hanged a white man who was awaiting trial for the murder of a negro, and had arbitrarily imprisoned various citizens until the latter were willing to bribe their tormentors for their release.[1] The town was terrorized. No writ could be executed against any negro or friend of the soldiers. Throckmorton protested vigorously to General Heintzleman and insisted that Spaulding be court-martialed and that the troops be removed from Victoria altogether. When the case finally came before General Sheridan, three months later, he ordered that one of the soldiers be turned over to the civil authorities for trial, a concession that the governor found "very gratifying," in that "the military were disposed to recognize the civil authority of the State."[2]

A peculiar and yet in some ways a characteristic case came to notice in Bell county. In Collin county before the war a man named Lindley, who was a violent secessionist, was found to be connected with a gang of horse-thieves and was driven out. After the close of the war he turned up in Lampasas county engaged in the same business.[3] Threatened with arrest and fearing the testimony of two citizens of Bell county named Daws and Duncan, he procured their arrest by the military authorities on the plea that he was a "Union" man and that his son had been hanged during the war by the said Daws and Duncan because of his Union sentiments. While these men were in charge of a military escort they were shot down by Lindley in cold blood with no effort at interference by the officer in charge, who even attempted to protect Lindley from punishment. Both Lindley and the officer were in-

[1]C. Carson and others to Throckmorton, MSS. in *Executive Correspondence.* Also Throckmorton to Heintzleman, September 25, 1866; copy in *Executive Correspondence.*

[2]Throckmorton to Shropshire, copy in *Executive Correspondence.*

[3]Throckmorton to Sheridan, *Executive Records, Register Book* 84, p. 246; also Throckmorton to Saonberry, *ibid.*, p. 122

dicted by the grand jury of Bell county, but the military authorities insisted that they be tried before a military commission and refused to allow any attorney to represent the State or even to submit written questions to the witnesses.[1] Whatever the reason for so doing, the military court acquitted both the accused; but later Lindley was arrested by the civil authorities and jailed at Belton. He loudly demanded a guard of troops; but, backed by the promises of the citizens, the governor assured the military that the prisoner was safe. Nevertheless, a mob broke into the jail and hanged him. Heralded to the world as the martyrdom of a "Union man," his death furnished political capital to the radicals, while the failure of the citizens of Bell county to merit the confidence and to sustain the promises of the governor seriously weakened his efforts to get rid of the military and caused him both anxiety and chagrin.

Numbers of instances could be recited wherein military officials over-rode the civil authority in true cavalier fashion. At Lockhart and at Seguin court records and papers were seized and destroyed or mutilated. In Houston a negro indicted and confined for an assault to murder escaped, and the Bureau agent resisted his rearrest by the sheriff. The county judge of Grimes county was placed under military arrest. At Brenham the Bureau agent seized and made use of the jail and imprisoned the editor of a local paper for publicly criticising the conduct of certain teachers of freedmen. The editor was released after three weeks through the intervention of the governor, who sent a protest to General Kiddoo. In Grayson county a government agent who had been arrested for offenses committed before entering upon his office was forcibly released by the military. To lay all the blame for these troubles upon the military would manifestly be unjust; in many cases they were provoked by the dilatoriness of the civil courts or by the prejudices occasionally manifested against those new rights claimed for the negro but not clearly granted him by the State code. Moreover, as the peace proclamation of the president could not abolish a jurisdiction established by Congress, the officers of the Freedmen's Bureau were still in duty bound to interfere in

[1]Throckmorton to Heintzleman, September 24, 1886, MS. copy in *Executive Correspondence.*

behalf of the negro whenever they believed he was being unjustly treated.

It was in obedience to this obligation that General Griffin, the new assistant commissioner for Texas, in a circular order issued January 26, 1867, directed his subordinates to "enforce the rights of freedmen according to the laws of Congress whenever injustice is done them or whenever the civil authorities neglect to render them justice."[1] A week later, however, relations with the civil authority were more carefully defined and the force of the above order somewhat modified by instructions that all criminal cases in which freedmen were concerned should be left to the civil authorities; but that unpunished or unnoticed outrages upon freedmen and all cases arising under the Civil Rights Act should be reported to military headquarters; that in civil suits the agents were merely to act as the advisers of the freedmen before the courts and to report the action of the courts to headquarters; and that the enforcement of the State vagrancy and apprenticeship laws should not be interfered with if fairly administered.[2] Though inclined at times to allow the civil authorities opportunity to prove their desire to administer real justice, it is, nevertheless, pretty clear that the man of arms was too often skeptical of their justice, too frequently disposed to bully, to resort to force when his jurisdiction was questioned, and to protect one of his own faith and party against the law of the "rebel" without inquiring very carefully into the merits of the case or into the right of the civil authority to be respected.

More harmful, however, to the new State government than the troubles indicated above were the statements sent to Washington by high federal officials. In his final report of inspection of Bureau affairs in Texas, made in June, 1866, General Gregory had stated that Union men and freedmen were "trembling for their lives and preparing to leave the State," that murders aud outrages upon freedmen had been on the increase since March (i. e., since the adjournment of the Convention) and that the criminals were always acquitted in the civil courts.[3] In his zeal

[1]See *Flake's Weekly Bulletin*, February 6, 1867.
[2]See *Southern Intelligencer*, February 2, 1867.
[3]Gregory to Howard, printed in *Flake's Weekly Bulletin*, August 1, 1866.

to aid his radical friends the commissioner had forgotten that the civil officials of whom he complained were those appointed by Hamilton, since the recently elected conservatives were not installed until August. Sheridan, in his official report, declared that conditions in Texas were such that the trial of a white man for killing a negro would be a farce,[1] and in a letter to Throckmorton, January 16, 1867, asserted that "there are more casualties occurring from outrages perpetrated upon Union men and freedmen in the interior of the State than occur from Indian depredations on the frontier. The former greatly exceed the latter and are induced by the old rebellious sentiment."[2] To this Throckmorton entered a prompt and vigorous denial. He told Sheridan that the latter and his officers had for the most part been imposed upon by men who proclaimed themselves "outraged Union men," but who had really never been Union men at all; more often they were rogues and horse-thieves who set up that cry in order to get protection of the military. He himself had been a Union man before the war, had had extensive correspondence with Union men all over the State, and he knew that some of these men who were now being outraged "for their Union sentiment" had formerly been "brawling, blatant secessionists" and notorious for their bad character.[3] Not content with this, the governor, on February 9, sent out circular inquiries to the civil officers throughout the State, chiefly to the justices of the county courts, regarding the treatment of Union men and freedmen in the courts and at the hands of the people in general, and making specific inquiries concerning such cases as had been brought to his attention. In the answers to this circular it was claimed without exception that the law was impartially enforced upon all classes without distinction of color or politics. Some writers complained of the Bureau officials, some of the soldiers, while some were on the best of terms with the military, to whom they referred for endorsement of their statements. Although one is tempted to suspect that many of the civil officials endeavored to make out as cheerful a picture of conditions

[1]See *Official Records, War of Rebellion*, Series I, Vol. XLVIII, Part 1, p. 301.
[2]MS. in *Executive Correspondence.*
[3]Throckmorton to Sheridan, *Executive Records, Register Book 84*, p. 246.

as possible, a careful examination of the records of the executive office goes far to bear out their statements as far as the courts were concerned. In trials for homicide of freedmen the defendants were often acquitted, but numerous cases are found in which white men were convicted on this charge. On the other hand, numbers of negroes convicted of petty crimes, as of theft, were pardoned by the governor upon petition of judge and jurors. The longest and most interesting of the reports above mentioned is from Robert Wilson, county judge of Grayson county, who confessed that many foul murders had been committed in his county, but insisted that they were the work of a band of outlaws from across Red River in the Indian Territory. The freedmen, he said, suffered from no injustice in the courts, and the instances of their mistreatment by the people were rare. Union men were not persecuted: he himself had always been a Union man and had been elected over a secessionist of unimpeachable character. A "refugee" had recently gained a law suit though several times beaten before the war. The cry of persecution had always come from some person who, having transgressed the law, wished to enlist for his defense the sympathies of the military and of the general government.[1]

On the whole, Throckmorton's confidence in the ability of the State and local officials to maintain justice and order seems to have justified itself, though a few localities still retained an undesirable reputation for violence and outrage.[2] The governor, however, had not been content to wait for conditions in the interior to become thoroughly settled before trying to relieve the situation on the frontier. It will be remembered that Hamilton had spent some effort in that direction but had finally acquiesced in Sheridan's claim that the troops were needed more in the interior.[3] Perhaps Throckmorton's previous experience on the frontier and as commissioner to the Indians under the Confederacy made him peculiarly alive to the situation in that region. Certain it is that the harrowing tales of cruelty and suffering and the con-

[1]For this and other reports see *Executive Correspondence.*
[2]For alleged outrages upon freedmen at Prairie Lea, see W. C. Philips to Throckmorton, MS. in *Executive Correspondence.*
[3]See THE QUARTERLY, XI, 299.

stant appeals for protection that came to him weighed heavily upon his mind. Hardly was he seated in the governor's chair when he urgently requested General Wright to send troops to the desolated border,[1] and he gave the subject of frontier relief a prominent place in his message to the Legislature.[2] Wright, keeping in line with Sheridan's former attitude, replied that he had no authority to establish new posts; that it was wholly within the power of General Sheridan; and that, besides, there was not sufficient force in Texas for the work without breaking up the interior posts. Seeing that it was useless to wait upon the military commander, the governor wrote, on August 25, to President Johnson, as commander-in-chief, describing the conditions on the frontier and urgently repeating his request that troops from the interior go to its protection since they were not needed for the enforcement of the law.[3] Mr. Johnson referred the matter to Stanton, secretary of war, who referred it to Grant and told Throckmorton to confer with Sheridan.[4] Thrown back upon the mercies of Sheridan, he next appealed to General Heintzleman in command of the western division of Texas and succeeded in persuading him to send two regiments of cavalry to the lower frontier.[5] The Legislature authorized the raising of one thousand State troops,[6] which were tendered Sheridan, but were refused by him on the ground that the United States could furnish all the soldiers necessary.[7] In his annual report to the War Department, Sheridan declared that justice was not done freedmen, Union men, and soldiers in the interior, and that troops were still needed there; and expressed the belief that the reports of Indian depredations on the frontier were "probably exaggerated" and that conditions were "not alarming." However, he stated that frontier posts

[1]See *Executive Records, Register Book No. 84*, p. 37.
[2]*House Journal, Eleventh Legislature*, 80.
[3]Copy in *Executive Records Register Book No. 84*, p. 60; also MS. in *Johnson Papers*.
[4]MS. in *Johnson Papers*.
[5]Throckmorton to Heintzleman, and Heintzleman to Throckmorton, MS. in *Executive Correspondence*.
[6]Gammel, *Laws of Texas*, V, 928, 942, 1035.
[7]See MS. in *Executive Correspondence*.

would be established in the spring.[1] When a measure of protection was finally afforded, Texas had passed again into a "provisional organization."

5. *The Work of the Freedmen's Bureau.*

The chief activities of the Bureau from the spring of 1866 to March, 1867, may be indicated in brief space. The measure of relief work carried on in Texas had never been very great.[2] Such indigent negroes as were not cared for by their former masters were transferred to the charge of the counties on the ground that they were citizens and entitled to poor relief, as clearly as were indigent whites.[3] During the fifteen months ending September 1, 1866, the average number of rations issued daily in the whole State was only twenty-nine.[4] The number of pupils enrolled in the schools for freedmen was over four thousand five hundred, with forty-three teachers.[5]

The most constant watchfulness had not been sufficient to hold the negro to his contract, and, in his own interest as well as that of the planter, appropriate measures had been taken from time to time to keep him in the fields until the crop was gathered.[6] On this account Kiddoo became convinced that contracts for labor should be made for the entire year instead of by months, especially in the cotton-growing districts.[7] In order to protect those who were employed by the month he ordered that all unpaid wages were to be held as a first lien on the crop, regardless of sales, rents, or other claims whatsoever; and that, where so specified in the contract, payments should be made in specie or its equivalent in currency at the time the contract was made.[8] Later, in the cotton

[1] *Official Records, War of Rebellion*, Series 1, Vol. XLVIII, Part I, 301. Sheridan seemed to believe that the whole affair was a mere ruse to get the military out of the way in order that the freedmen and unionists might be left defenceless against "rebel" hostility. See above, p. 225.

[2] See THE QUARTERLY, XI, 293, and note 1.

[3] Kiddoo, *Circular Order No. 16*, June 18, 1866.

[4] Howard, *Annual Report, House Exec. Docs., 39 Cong., 2 Sess.*, I, 745.

[5] *Ibid.*

[6] See above, p. 214; also Kiddoo to Howard, printed in *Flake's Weekly Bulletin*, August 22, 1866.

[7] Kiddoo to Howard, in *FFlake's Weekly Bulletin*, August 22, 1866.

[8] *Circular Order No. 19*, August 20, 1866, in *Executive Correspondence.* Paper money was at a discount at this time.

picking season, the officials of the Bureau were instructed to see that the freedmen who had worked on shares got their just portion of the crop and the market price for it. Where necessary the agents were to arbitrate differences arising out of claims for supplies furnished the freedmen during the summer; but, except in extreme cases, this was to be avoided, and the agents were to confine themselves to the arbitration of differences arising out of written contracts for labor.[1] By a later order, he insisted that no contract for labor to which a freedman was a party could be regarded as finally settled until arbitrated and fulfillment certified to by an officer of the Bureau.[2] In order to avoid misunderstanding growing out of indefinite terms in the contracts, all agents were instructed to take care that in the contracts for the next year every detail of the agreement should be specified and that nothing be left to be "understood"; and they were also required to urge the freedmen to take a portion of the crop rataher than monthly wages.[3] The labor law devised by the Legislature was repudiated by Kiddoo and contracts made in accordance therewith were disapproved; but General Griffin, who succeeded Kiddoo on January 24, 1867, uniting the military command of the State with the control of the Bureau, adopted some of its provisions. Contracts for labor could be drawn up before and ratified by a civil magistrate or any two disinterested witnesses, provided that a copy was sent to Bureau headquarters; a copy was also to be filed with the county clerk.[4] Within a few weeks Texas was again under military rule, when there was no question of the relative status of the civil and the military authority; but the Bureau had never been in doubt of its own authority and the protests of the State officials had made little impression upon its policies.

Hampered as he was on all sides by the open hostility of the radicals, the suspicion of the military officials, and the thinly

[1] *Circular Order No. 21*, October 1, 1866, in *Executive Correspondence.*
[2] *Circular Order No. 23*, November 1, 1866, in *Executive Correspondence;* also in *Southern Intelligencer*, November 15, 1866.
[3] *Circular Order No. 21*, December 25, 1866, in *Southern Intelligencer*, January 3, 1867.
[4] See *Flake's Weekly Bulletin*, February 6, 1867; also *Southern Intelligencer*, February 14, 1867.

veiled antagonism of the old secession wing of his own party, Throckmorton had maintained his difficult position with dignity and a large measure of success. Although prevented from affording relief to the suffering frontier, and unable to eliminate entirely the jurisdiction of the Bureau, he was, nevertheless, making steady progress in restoring the State to order and in inculcating a respect for legal processes. Much still remained to be done; but as lawlessness and violence gradually became less prevalent, the military had shown a tendency to acquiesce more and more in the extension of civil jurisdiction, and one can not escape the conclusion that, had Congress kept hands off, Texas would have been fully restored in a short while to that condition of real peace which it was the professed aim of the Reconstruction Acts to bring about.